

**ACTION      DELAYED,      SMALL      BUSINESS  
OPPORTUNITIES DENIED: IMPLEMENTATION OF  
CONTRACTING REFORMS IN THE FY2013 NDAA**

---

**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON CONTRACTING AND  
WORKFORCE  
OF THE  
COMMITTEE ON SMALL BUSINESS  
UNITED STATES  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRTEENTH CONGRESS  
SECOND SESSION

HEARING HELD  
JULY 15, 2014



Small Business Committee Document Number 113-075  
Available via the GPO Website: [www.fdsys.gov](http://www.fdsys.gov)

U.S. GOVERNMENT PRINTING OFFICE

88-719

WASHINGTON : 2014

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

HOUSE COMMITTEE ON SMALL BUSINESS

SAM GRAVES, Missouri, *Chairman*  
STEVE CHABOT, Ohio  
STEVE KING, Iowa  
MIKE COFFMAN, Colorado  
BLAINE LUTKEMEYER, Missouri  
MICK MULVANEY, South Carolina  
SCOTT TIPTON, Colorado  
JAIME HERRERA BEUTLER, Washington  
RICHARD HANNA, New York  
TIM HUELSKAMP, Kansas  
DAVID SCHWEIKERT, Arizona  
KERRY BENTIVOLIO, Michigan  
CHRIS COLLINS, New York  
TOM RICE, South Carolina  
NYDIA VELÁZQUEZ, New York, *Ranking Member*  
KURT SCHRADER, Oregon  
YVETTE CLARKE, New York  
JUDY CHU, California  
JANICE HAHN, California  
DONALD PAYNE, JR., New Jersey  
GRACE MENG, New York  
BRAD SCHNEIDER, Illinois  
RON BARBER, Arizona  
ANN McLANE KUSTER, New Hampshire  
PATRICK MURPHY, Florida  
  
LORI SALLEY, *Staff Director*  
PAUL SASS *Deputy Staff Director*  
BARRY PINELES, *Chief Counsel*  
MICHAEL DAY, *Minority Staff Director*

# CONTENTS

## OPENING STATEMENTS

Hon. Richard Hanna .....	Page 1
Hon. Grace Meng .....	2

## WITNESSES

Ms. Angela Styles, Partner, Crowell & Moring, LLP, Washington, DC .....	4
Ms. Charlotte Baker, President, Digital Hands, Tampa, FL, testifying on behalf of Women Impacting Public Policy .....	6
Mr. Larry Allen, President, Allen Federal Business Partners, McLean, VA .....	7
Mr. Damien Specht, Special Counsel, Jenner & Block, LLP, Washington, DC .....	8
Hon. John Shoraka, Associate Administrator for Government Contracting and Business Development, Small Business Administration, Washington, DC .....	17

## APPENDIX

Prepared Statements:	
Ms. Angela Styles, Partner, Crowell & Moring, LLP, Washington, DC .....	25
Ms. Charlotte Baker, President, Digital Hands, Tampa, FL, testifying on behalf of Women Impacting Public Policy .....	30
Mr. Larry Allen, President, Allen Federal Business Partners, McLean, VA .....	34
Mr. Damien Specht, Special Counsel, Jenner & Block, LLP, Washington, DC .....	40
Hon. John Shoraka, Associate Administrator for Government Contracting and Business Development, Small Business Administration, Wash- ington, DC .....	47
Questions for the Record:	
None.	
Answers for the Record:	
None.	
Additional Material for the Record:	
None.	



## **ACTION DELAYED, SMALL BUSINESS OPPORTUNITIES DENIED: IMPLEMENTATION OF CONTRACTING REFORMS IN THE FISCAL YEAR 2013 NDAA**

---

**TUESDAY, JULY 15, 2014**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
SUBCOMMITTEE ON CONTRACTING AND WORKFORCE,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 1:00 p.m., in Room 2360, Rayburn House Office Building, Hon. Richard Hanna [chairman of the Subcommittee] presiding.

Present: Representatives Hanna, Tipton, Meng, Velázquez, and Clarke.

Chairman HANNA. Call this hearing to order.

Thank you all for being here. Nearly 4 years ago, this Subcommittee began a comprehensive look at small business contracting reform. We held numerous hearings and held round tables, eventually settling on commonsense contracting reforms. These reforms were passed by the Small Business Committee in early 2012, adopted as part of the National Defense Authorization Act in 2013 and eventually signed by the President on January 2, 2013.

Unfortunately, what should have been a bipartisan success story has soured due to inaction and inattention. A year and-a-half later, the vast majority of these reforms remain unimplemented, and this is causing real harm to small businesses. We are a society of laws, and all businesses need to know what laws apply to them so they can comply and so they can thoughtfully chart their future course.

For example, Congress began reforming the mentor-protege programs with the 2010 Small Business Jobs Act and then continued this in the 2013 NDAA. However, no proposed regulation or program guidance has been forthcoming from the Small Business Administration on this topic. This means small businesses don't know if they should pursue a mentor-protege agreement at the Department of Homeland Security or if the SBA will declare the program invalid in a year. This creates an unnecessary barrier to growth.

Likewise, Congress has enacted numerous reforms to make it easier for small businesses to team and these also have not been implemented. Not only do they harm small businesses with teaming, they also face contradictory regulations, statutes and contract provisions. Small businesses are not set up to be arbitrators of the law. We need agencies to implement regulation in a timely fashion.

While I understand that some rulemaking issues may be complicated, that does not excuse the failure to meet statutory deadlines. Furthermore, I fail to understand why it took the SBA 19 months to simply publish the name of their suspension and disbarment officer online. This requirement required no regulation and could have been done in a matter of minutes. But the SBA didn't post it until this morning, 569 days after the President signed this bill into law.

Further, while the information may be technically on the Web site, it is exceedingly difficult to find. Typing "suspension" and "disbarment" into the search tool does not actually take you to the suspension and disbarment officer or office. This delay is a perfect example of how bureaucratic barriers to private-sector growth work. SBA has been busy by spending \$39 million on SBA-created initiatives rather than implementing the law passed by Congress and signed by the President.

Today, our first panel will help us understand what the lack of implementation means to small businesses in a practical sense, then the SBA will join us for a second panel to explain to the committee what steps are being taken to implement these needed reforms.

I want to thank the witnesses again for being here.

I now yield to Ranking Member Meng for her opening statement.

Ms. MENG. Thank you, Mr. Chairman.

I appreciate you holding this hearing on this critical topic. The Small Businesses Committee, and this Subcommittee in particular, have a long tradition of working in a bipartisan manner on procurement and contracting issues. Together, we have worked to modernize the SBA's contracting initiatives while exposing fraud, waste and abuse in a range of small business procurement programs. It is my hope that today's hearing will continue in that direction.

By examining changes to small business contracting policy included in last year's Defense Authorization Act, we can hope to further improve this process for our Nation's entrepreneurs. For small businesses, Federal agencies can be a great client. Last year, the Federal Government spent \$461 billion purchasing a wide range of goods and services. Federal agencies require everything from paper clips to air planes to landscaping to construction, and small companies are vital to meeting these needs.

Congress has long recognized the many benefits stemming from small business participation in the Federal marketplace. Helping small firms land these opportunities spurs job creation and helps small companies grow into larger ones. Often, when a larger company is awarded a Federal project, its existing workforce can absorb the new demand for its products or services. However, when small companies take on government work, they often must increase their capacity, growing their payroll and creating new jobs. This, in turn, generates greater overall economic opportunity in communities where small businesses are located.

The public also benefits from this arrangement. Small firms provide excellent service and quality products at competitive prices. When the government does business with them, taxpayer dollars are well spent. Moreover, bringing additional small companies into

the procurement pool creates competition, thereby driving down prices and boosting service quality. Given the valuable public benefits of having government do business with small enterprises, it is important that Federal agencies be proactive in this area and that small firms be able to navigate the procurement process.

Unfortunately, this has not happened. The 23 percent small business contracting goal has not been met in many years; although, it appears that objective may finally be met this year. Still, those numbers are not final. Even if, at long last, the Federal Government has finally met its 23-percent goal, this alone is not sufficient. The 23-percent goal should be considered a floor not a ceiling when it comes to small business participation.

Similar initiatives aimed at helping women-owned businesses have fallen short. The Service-Disabled Veteran-Owned Small Business Program has also not kept pace. In that regard, it is worth discussing whether raising these goals would be a useful step. However, if they remain simply that, unenforceable goals, and there is no penalty for failure to meet them, it is unclear how changing the numbers will actually get more disadvantaged and small firms involved in the procurement market.

Part of the issue has been a failure to invest the appropriate resources to ensure small firm participation. An overworked staff of procurement center representatives is tasked with expanding outreach to the small business community. However, with their ranks thinned, the fact is that they simply do not have that manpower to police every procurement action and ensure small businesses get a fair shake.

Of course, our committee is familiar with how big companies have historically gamed the system, syphoning off projects that should be designated for small firms. Whether it is HUBZones, the Service Disabled Veterans Program, misuse of pass-through arrangements or simply miscoding big companies as small ones, we all know that there are significant problems in the procurement process.

In sum, Mr. Chairman, there is no shortage of policy obstacles that prevent small firms from winning their fair share of Federal contracts. It is my hope that today's discussion will take a broad look at how we can rectify some of these problems while working to improve the process for entrepreneurs. Whether it is the legislation passed by the committee earlier this year, changes made through the Defense Authorization Act, or simply enhanced oversight, we must continue pushing to ensure small businesses are not locked out of the contracting process.

Thank you to our witnesses for being here today, and I thank the chairman again and yield back.

Chairman HANNA. Thank you.

I will just quickly explain the lighting system. It is 5 minutes. When it gets yellow, you have another minute. Try to stay close. We want to hear what you have to say, so we will be flexible.

For our first panel, I am pleased to welcome Angela Styles. Ms. Styles is a partner with Crowell & Moring, specializing in Federal contract law and proved herself a great friend to small businesses when she served as the administrator for the Federal procurement policy.

Next to her is Larry Allen. Mr. Allen, President of Allen Federal Businesses Partners, a small business in McLean, Virginia, that helps small and large businesses navigate the Federal procurement landscape.

Our third witness is Ms. Charlotte Baker, the cofounder of Digital Hands. Digital Hands is a woman-owned business, a small business specializing in managed security services. She is here today testifying on behalf of Women Impacting Public Policy.

Our fourth witness and final witness on this panel is Dr. Damien Specht. Mr. Specht cofounded Jenner & Block's Government Contracts Corporate Transactions Group.

Again, welcome you, Ms. Styles, you may begin.

**STATEMENTS OF ANGELA STYLES, PARTNER, CROWELL & MORING, LLP, WASHINGTON, D.C.; CHARLOTTE BAKER, PRESIDENT, DIGITAL HANDS, TAMPA, FL, TESTIFYING ON BEHALF OF WOMEN IMPACTING PUBLIC POLICY; LARRY ALLEN, PRESIDENT, ALLEN FEDERAL BUSINESS PARTNERS, MCLEAN, VA; AND DAMIEN SPECHT, SPECIAL COUNSEL, JENNER& BLOCK, LLP, WASHINGTON, D.C.**

#### **STATEMENT OF ANGELA STYLES**

Ms. STYLES. Thank you very much, Chairman Hanna, Congresswoman Meng.

I appreciate the opportunity to appear before you today to discuss the impact of the Small Business Administration's failure to implement Federal contracting reforms mandated in the National Defense Authorization Act for fiscal year 2013. SBA's failure to act has created significant ambiguity for Federal contractors, both small and large. While this uncertainty keeps the lawyers, like me, busy, it costs contractors and results in higher prices for the Federal Government.

As chair of Crowell & Moring's government contracts group and the former administrator of the Office of Federal Procurement Policy, I work with contractors affected by SBA's inaction every single day. We have started to see a dramatic increase in compliance questions related to these unimplemented provisions, but there is one specific provision and a complicated one that I want to focus on today.

The 2013 NDAA modified the Small Business Act to change the limitations on subcontracting for Federal prime contracts awarded to small businesses under set-aside programs. So, for example, when a Federal procurement is set aside for competition among small businesses, the winning small business prime contractor is restricted from subcontracting more than a certain percentage of the amount paid by the Federal Government to another business.

For service contracts, the NDAA provision provides that the small business prime contractor may not expend on subcontractors more than 50 percent of the amount paid to the small business prime contractor by the Federal Government. So, for example, if you receive a contract award for \$100 as a small business, you can't subcontract more than \$50 of the award to a large business. It is simple. It is easy to apply. And it is really easy for everyone,

whether you are a prime contractor or you are a subcontractor or you are the government.

The NDAA statutory provision was a meaningful change, because for many years, and guess what, still existing in current, unmodified form in SBA's regulations in the FAR, the limitation on the subcontracting regulations require small business prime contractors awarded a prime contract on a set-aside basis to agree to something completely different; that at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the small business prime contractor.

In practice, what constitutes the cost of contract performance for personnel has been absolutely impossible to understand or to implement. So, for example, if a small business prime contractor is awarded \$100,000 contract to maintain trucks at a military base and the small business prime contractor wants to subcontract, say, engine maintenance to a large business, the small business prime contractor has to convert the \$100,000 firm-fixed price contract into a cost-of-performance metric under the current regulations that have not been modified to take into account the NDAA statute.

It is really a cost reimbursement contract that they have to convert it to, and they have to compare the cost of their small business cost of performance for personnel to the cost of performance of the large business contractor. Nobody knows what they are doing. Nobody knows how to administer this correctly, and the uncertainty has led to many disputes with the government and between prime contractors and subcontractors.

The NDAA changed this requirement into a simple calculation. In my example, the small business prime subcontractor—the small business prime contractor could subcontract \$50,000 of the award to a large business. Simple and easy to administer and understand. The SBA's failure to implement new regulations consistent with the NDAA is creating chaos. A contract executed by a Federal agency today with a small business contains the old regulation, which requires at least 50 percent of the cost of contract performance incurred for personnel is expended for employees of the small business prime contractor.

The contract clause does not exempt the small business from also complying with the NDAA provision. So compliant and diligent small businesses are left in the position of implementing two inconsistent provisions, one that is in regulation and one that is in the statute. This inconsistency is adding millions of dollars to compliance costs for small businesses. SBA needs to immediately begin this rulemaking process to resolve the uncertainty and to improve the business climate.

The Small Business Administration's mission is to aid counsel and assist and protect the interest of small businesses. SBA's failure to act is crippling the very small businesses it is supposed to protect and to assist. Congress enacted commonsense reforms to clarify the complex limitations on subcontracting, allow small businesses to team more effectively, eliminate regulatory compliance burdens and provide opportunity for new small businesses to get into the government contracting business. SBA's failure to act has denied these benefits to Federal contractors, large and small, results in inefficiencies and lost opportunities for economic growth.

This concludes my remarks, but I am more than happy to answer questions.

Chairman HANNA. Thank you.

Ms. Baker.

#### **STATEMENT OF CHARLOTTE BAKER**

Ms. BAKER. Chair Hanna, Ranking Member Meng and distinguished members of the Subcommittee, thank you for the opportunity to testify this afternoon. My name is Charlotte Baker. I am the CEO of Digital Hands, a Tampa-based IT company that provides innovative IT services to large enterprise companies as well as public entities, helping them in their ongoing war against growing cyber threats.

I am here today representing Women Impacting Public Policy, or WIPP, as a member of their education foundation board. WIPP is a national nonpartisan public policy organization advocating on behalf of its coalition of 4.7 million businesswomen, including 75 business organizations. My testimony will focus on the urgently-needed rulemaking that will enable my business as well as many other small businesses to win more Federal contracts. Specifically, we need the SBA to implement Section 1651 of the fiscal year 2013 NDAA as soon as possible.

Previously, WIPP testified on the importance of changing the law with respect to contracting, and this committee oversaw its passage. So let me take this opportunity to say thank you.

I would also like to take a minute to explain the subcontracting changes contained in Section 1651. The section makes an important change that the 50 percent prime contractor work requirement on set-aside contracts are made on the basis of total contract dollars rather than based on the current method of labor costs. This change ensures that the majority of dollars set aside for small business goes to that small business.

Equally important in Section 1651 is Subsection B, which allows similarly-situated entities to contract with each other without specifying a percentage of the work that each is required to do. Previously, the law limited subcontracting to 50 percent of the labor cost on set-aside contracts. For purposes of definition, a similarly-situated entity is a WOSB prime contractor winning a WOSB set-aside and subcontracting work to another WOSB firm. Another example is a small business prime contractor winning a small business set-aside contract and subcontracting to another small business.

So why is this important? Because it affects companies like mine that perform complex IT services. Let me give you an example. Several months ago, a significant IT requirement was posted by an agency. Digital Hands and another EDWOSB planned a team together to meet the scope of work. The other EDWOSB, the prime, was to provide logistical support and access to a Federal supply schedule while Digital Hands would have subcontracted to provide an innovative technology solution utilizing highly-trained IT security personnel.

In this case, Digital Hands subcontracting the work, the portion of the cost of labor provided by Digital Hands higher-paid security personnel would have resulted in a much higher percentage of cost

than the 50 percent allowed to subcontractors. To further explain, while the majority of the hourly work, the number of hours, would have been provided by the prime through its lower-cost technicians, the bulk of the labor cost would have come from us, from Digital Hands. Because of the current subcontracting rule, the 50-percent limit effectively prohibited us from bidding.

On a broader level, promulgation of Section 1651 will ensure that dollars awarded remain with the companies who have the same set-aside designation and increased access to Federal contracts for businesses like mine. As we continue to respond to Federal opportunities, these elements are critical. My recommendation is simple: Urge the SBA to implement this provision as quickly as possible. Thanks to this committee's leadership, Congress passed the change. Now the SBA needs to implement it. The longer the delay, the more small businesses will miss out.

Thank you for the opportunity to testify today. Hopefully, my story will expedite the enforcement of this rule. I am happy to answer any questions.

Chairman HANNA. Thank you.

Mr. Allen.

#### **STATEMENT OF LARRY ALLEN**

Mr. ALLEN. Good afternoon, Mr. Chairman, Ranking Member Meng and members of the Subcommittee.

I am honored to be here this afternoon to discuss the pace of the Small Business Administration's implementation of three sections of the fiscal year 2013 NDAA. These laws limit the liability of companies receiving advice from Federally-supported entities, provide greater clarity about small business suspension and debarment procedures and provide this body with additional reporting on that process. SBA delays in establishing rules for each of these elements are harming the small businesses that Congress wanted to protect.

Section 1681 establishes safe harbor protections for small businesses that rely on advice given by either procurement technical assistance centers or small business development centers. Small businesses that take advice from these organizations believe that it is correct and has the support of an agency of the United States Government. Without the implementation of this section, small contractors could find themselves in significant trouble if they act based on recommendations of an SBDC or PTAC that are inconsistent with procurement rules.

There are many centers dispensing advice to many small firms. It is very possible that either incorrect or incomplete information could be dispensed. Without the protections in 1681, small firms that inadvertently fall into noncompliance could find themselves exposed to a host of problems. Under the Civil False Claims Act, for example, the government is entitled to triple the amount of monetary damages actually incurred and in addition to an \$11,000-per-invoice fine.

Once a small company is through with litigation, fines, attorney's fees and other costs, it may find that its very viability has been compromised. The safe harbor provisions of Section 1681 would protect small firms from the worst penalties if their violations were caused due to reliance on faulty information provided by a PTAC

or SBDC. Among the penalties of the government's disposal to discipline inappropriate contractor behavior are suspension and debarment. These penalties are commonly referred to as the death penalty in government contracting.

A Federal suspension or debarment brings all of the company's public sector work to a halt, even as a subcontractor. Suspensions and debarments are currently increasing. The GAO recently issued a report showing that subsections have more than doubled since 2009. Ironically, the same report identified improvements made in six government agencies to bring consistency and transparency to their suspension and debarment process, something the SBA is specifically supposed to do per Section 1682.

The SBA was to introduce suspension and debarment regulations, new standard operating procedures and identify a suspension and debarment officer, which they did, as you have mentioned, Mr. Chairman, this morning. Two things are happening without these rules: First, companies wrongly identifying themselves as small, an issue that this committee is familiar with, have an easier time fighting suspension or proceedings; second, truly small firms are suffering from the lack of a consistent, transparent process from the agency charged with protecting and promoting their Federal market participation.

Congress passed 1682 with the intent to protect small businesses. As a result of the SBA's inaction, though, small businesses may actually be treated more fairly at some of the other agencies. Section 1683 requires that the SBA issue an annual report to Congress on suspension and debarment. Since the SBA oversees many types of small firms, there are special precautions that must be taken. Congress is right in wanting to review agency actions here.

While the initial intent may have been to suspend or debar companies improperly calling themselves small, this section could also protect real small firms from inconsistent processes. The specific report details called for in Section 1683 will give Congress a fuller understanding of what is happening. Publishing the information may actually result in fewer companies being penalized.

Lastly, properly used, the information can also be used to help Congress make future decisions on appropriate small business legislation. We recommend that Congress continue to provide oversight on the SBA's lack of progress in implementing these three key elements of the 2013 NDAA and take steps to hold senior agency officials accountable for this inaction.

I thank you for your time and attention and look forward to your questions.

Chairman HANNA. Thank you.

Mr. Specht.

#### **STATEMENT OF DAMIEN SPECHT**

Mr. SPECHT. Chairman Hanna, Ranking Member Meng and members of the Subcommittee, thank you for the invitation to appear today. Before I begin, let me state that my comments are my own, and I am not speaking on behalf of my law firm or any specific client. My name is Damien Specht, and I am a government contract attorney with the law firm of Jenner & Block here in Washington, D.C.

When the 2013 NDAA was enacted a year and-a-half ago, I discussed the legislation with both large and small clients. In general, they considered the NDAA to be a mixed bag for small government contractors, but reserved judgment until the legislation was implemented by the SBA. As we all know, little of that implementation has occurred. From my perspective, the most important change in the 2013 NDAA relates to SBA's mentor-protege program.

Many small contractors report difficulty convincing large prime contractors or government customers that they can successfully perform technically challenging or large-scale work. Large contractors also report difficulty finding the track record of success they need in the key small business subcontractor. SBA's mentor-protege program fills this gap by partnering large mentors with early stage 8(a) small businesses. The 2013 NDAA gave SBA the authority to expand the program beyond 8(a) firms, but I am not aware of any public statement that SBA will exercise that authority.

This has led to significant uncertainty in the contracting community as to whether expansion in this program will ever happen. SBA's delay may be the result of a number of difficult issues it must address. For example, does SBA have the resources it needs to administer a significantly larger program or will application processing times increase and oversight be weakened? In addition, the NDAA states that the expanded program shall be identical to the mentor-protege program for 8(a) concerns.

But the current program is limited to companies in the earliest stages of the 8(a) process. As a result, SBA will have to determine if all small businesses should participate in the expanded program or whether participation should be limited to early stage small businesses. From my perspective, the program was designed for early stage businesses, so limiting proteges to firms that fall below half of their relevant size standard would be a good way to expand responsibly while focusing on businesses that will benefit the most. SBA can then revisit additional expansion in future years.

The NDAA also required reform of agency level mentor-protege programs. In my experience, few clients are aware that these programs exist, and many confuse agency programs with the SBA's far more robust program. This can be a fatal error because only the SBA's mentor-protege program offers an affiliation exemption for a large mentor and a small protege bidding as a joint venture.

Because of this confusion, the 2013 NDAA's effort to increase uniformity among these programs was welcomed. Now, it is SBA's responsibility to resolve some key policy issues. First, will SBA impose a limit on the number of proteges a mentor can have or the number of contracts a mentor and protege can pursue? If so, will these limits apply across all mentor-protege programs, or will limits be applied to participants in each program?

Given the difficulties of tracking all mentor and protege relationships, I would suggest that limits be imposed on an agency-by-agency basis. After all, ensuring every willing protege has a mentor for different aspects of its business can only be beneficial. Second, should the joint venture affiliation for the SBA program apply to other agency programs? Expanding the exception would limit confusion and encourage participation in all agency programs.

Third, SBA must decide whether the benefits of different mentor-protégé programs should be uniform. For example, some agency programs offer small business subcontracting credit for costs spent assisting the protégé. This encourages the mentor to follow through on its commitment, so it would argue that such efforts should be adopted across the government and added to SBA's program.

As these issues highlight, we are at a key moment in the future of mentor-protégé programs. The goal of this effort should be expanding participation, but we cannot forget that expansion will require additional resources. Not all of the provisions of the 2013 NDAA are helpful for small businesses. As you know, the Small Business Jobs Act of 2010 imposed penalties up to the entire contract value on concerns that misrepresent their size. Although the 2013 NDAA added a safe harbor from this rule, the legislation and SBA's related rulemaking have a number of critical flaws.

First, SBA's proposed allowing local development center to choose whether to offer advisory opinions without offering additional funding. Given the additional work involved, what incentives to these centers have to issue opinions? Even if some offices choose to issue these opinions, what will this patchwork of resources mean for small businesses that are outside the region served by these offices?

Second, SBA has not proposed a time limit for issuing these opinions. Size determinations can take months and delays in advisory opinions cause small businesses to miss out on procurement opportunities. Third, SBA's proposed rule does not allow a contractor to appeal an adverse decision. Given the size determinations are regularly overturned by SBA's Office of Hearings and Appeals, small businesses require an appellate forum.

In sum, it is essential that small government contractors and small businesses considering entering the Federal space have the certainty of an effective safe harbor. Without significant revision, however, the currently-posed safe harbor is unlikely to meet that need.

Thank you for your time, and I look forward to your questions.

Chairman HANNA. Thank you very much.

Amazing. I feel like we should be having a conversation with the SBA, which we will have in a moment. I want to thank you for being here and listening to this, too. That is a big help, I think. Hopefully for you, too.

Mr. Allen, how does the SBA's suspension disbarment guidance compare with other agencies, such as the Air Force? And you mentioned that the remedy doesn't exist because you can't find the officer and then you can't define the rules and that people can be basically disbarred or suspended without a way to seek a remedy. What does that look like compared to other places you may know about?

Mr. ALLEN. Well, as I alluded to, Mr. Chairman, the GAO recently identified the Air Force, the Department of Veterans Affairs and a couple of other agencies that had taken significant steps to improve the consistency and transparency of their own suspension and debarment processes trying to make this a real business case for why you take that type of dramatic action.

Without having these reforms, the SBA is really operating behind the curve, not using best practices. The result is that you can't be assured of consistent decisions. You can be assured that there will be perhaps in some cases a proper reason to appeal a suspension or debarment decision, but without that transparency and having best practices like those recommended by GAO, it may be difficult and costly for a truly small business to protect itself.

Chairman HANNA. Are you concerned that it is arbitrary and capricious by virtue of what you just explained?

Mr. ALLEN. Certainly more arbitrary and capricious than it is at other agencies.

Chairman HANNA. Uh-huh. So that really is dangerous when you have—

Mr. ALLEN. Yes, sir. Particularly given the small business nature of the companies that are doing business with this agency.

Chairman HANNA. Thank you.

Ms. Styles, you explained a few things you thought could be done pretty quickly, and yet, some of these rules, I think, 48 out of 52 requirements have not been dealt with, not been formulated. Do you want to talk about that? I mean, what are the ones that you think it is kind of ridiculous that hasn't been done?

Ms. STYLES. Well, I think the primary one that I talked about—

Chairman HANNA. If that is true. I don't want to put words in your mouth.

Ms. STYLES. No, I think it is absolutely true. It is unfathomable for me to understand how it has taken so long, when it is really, many of these are minor regulatory changes that have to occur to create consistency in how contracting is happening even on the debarment one. You just, you want small businesses to know where to go, how to get there, what the process is for suspension and debarment and not have to pay the lawyer.

Chairman HANNA. Let me explain to anyone listening, you are an expert in this. This was your career.

Ms. STYLES. Yes.

Chairman HANNA. So it is not as if you are just an angry lady showing up here today.

Ms. STYLES. I was in charge of the rules before. I know that you can get them—

Chairman HANNA. You were in charge. So if you had that job, you would have it done or at least you have some done. Right.

Ms. STYLES. Absolutely. You know, it doesn't take that much to issue interim rules where a statute says the regulation has to change. It needs to happen. I mean, I can't tell you how much companies are having to spend to understand the differences and how much that is ultimately costing the government, as well.

Chairman HANNA. Do you think that is keeping the government from enjoying the best and most competitive opportunities?

Ms. STYLES. Absolutely. Absolutely. I think small businesses are confused and don't have access that they need to have and don't understand the rules to contract.

Chairman HANNA. Thank you.

I am going to yield to Ranking Member Meng.

Ms. MENG. Question to Mr. Allen: In efforts to increase small business subcontracting, commercial market representatives advise large prime contractors on maximizing subcontracting opportunities for small businesses and aids small businesses in marketing themselves to large businesses. In your opinion, are CMRs doing their job on this front, and how can they be more effective in increasing subcontracting opportunities?

Mr. ALLEN. I appreciate the question. My take is that you find a high degree of variability on the effectiveness of that type of advice from the SBA. It is really very highly dependent on the situation. A lot of times you will find that the lists of businesses that they reach out to and work with are fairly tight and confined to ones that they perhaps worked with in the past. And their comfort level and ability to work with other businesses is not so good, so those companies don't get the help that they need.

You are right in saying that large contractors take seriously their small business contract use. It is those efforts from the companies themselves that I think probably do the best job; whereas the SBA's resources are perhaps a little bit more scattershot in their effect. One of the best things, I think, that the SBA could do would be to be very active at a regional level with companies that can truly work with a larger prime contractor or even another small prime, because you find some very good people out around this country in those regions that can help the government, whether it is here or elsewhere.

Ms. MENG. Thank you.

Question to Ms. Baker: The NDAA required SBA to provide a Web site for large businesses to post subcontracting opportunities. However, this has yet to occur, leaving businesses with looking only to the existing sub net platform. Have you found that this Web site has been helpful in providing these opportunities?

Ms. BAKER. No, not whatsoever.

Ms. MENG. Do you think there are deeper problems or solutions that need to be rectified?

Ms. BAKER. I think the dissemination of information through a mechanism that can be trusted and that is updated and readily available is important for all small businesses. Without this, what happens is the cost of customer acquisition or the cost of pursuing Federal contracts is much higher, and it is done in an unorganized manner.

Ms. MENG. Thank you.

And question to Mr. Specht: The committee continues to hear from numerous small businesses about the problem of contract bundling. As a result of this practice, subcontracting and teaming have become the best options for small businesses that are unable to perform the entirety of these massive contracts. Yet, small businesses have faced difficulty in this arena, as agencies may prefer a single offer rather than offers received from teams. What has your experience been when your clients have teamed up with other businesses?

Mr. SPECHT. It is a great question, and it is an issue that comes up quite a bit. Quite a bit of my practice is negotiating these teaming agreements between large prime contractors and subcontractors. And I can tell you that from the government's perspec-

tive, you need to be crystal clear with the evaluators as to who is performing what work and the small, that may be a subcontractor, has to be extremely assertive about making sure that that is mentioned in the proposal.

Because, unfortunately, what often happens is that a small business will be part of a team, they will negotiate a teaming agreement, and then after award, the small business will be cast aside, the large business will absorb that work, and the small business will have been used to get the award but not to actually perform it.

Ms. MENG. And anyone else is welcome to answer.

Ms. BAKER. That is exactly one of the fears of the small businesses going together with a prime contractor. What has happened to us in many cases is that we will put together the work, we will spend a lot of time putting together our side of it, and there is no assurance moving forward. You do have to be aggressive that you will be the chosen one, but there is no guarantee.

With our peers, we have found stories that there have been promises made, and then in the end, the actual award that was bid on by the small business subcontractor was taken by the prime.

Ms. MENG. Thank you.

I yield back.

Chairman HANNA. Thank you.

Mr. Tipton.

Mr. TIPTON. Thank you, Mr. Chairman.

Thank you, panel, for being here. Just a couple of quick questions to follow up.

Ms. Styles, after the chairman's questions, in part of your answer, you said how much it is costing the government in terms of that. Can you expand on that a little bit? What is it costing the government?

Ms. STYLES. So it is probably impossible to quantify, but I can tell you, not an insignificant number of small businesses have come to my law firm to seek advice about how to comply with and the limitations on subcontracting rule in particular. If the rule is clear, if there was actually a rule in place implementing the NDAA, they wouldn't have to come; they wouldn't have to pay the bill. It adds to their cost.

And at the end of the day, even if it is a fixed-price contract, they have to pass the cost along somewhere. They will be passing those costs along in their contract because they all have to figure out how to comply with two inconsistent rules right now, and it has been going on for, what, you know, a year and a half, if not more. And they have to figure it out in order to the perform the contract. So they have to pay to get legal advice to understand what is the right thing to do.

Mr. TIPTON. Right. I am a small business guy. And you like to be able to know the rules that you are playing under, you know. Is this a chronic pattern that we are seeing? You know, we had Mr. Allen speak that some of the other agencies are doing a little better job in some specific components, but is this a chronic problem that you are seeing?

Ms. STYLES. I think so. I think that it is a chronic problem in terms of getting the rules out on time, understanding what the changes are and just the sheer complexity of the rules themselves.

Mr. TIPTON. Let's supplement, Ms. Baker. You just talked a little bit about the Web site not truly being helpful in terms of dispersing the information and in terms of the contracts. You are out of Tampa, Florida, if I recall correctly?

Ms. BAKER. Yes, sir.

Mr. TIPTON. And your economy may be a little bit better than it is in my district in Colorado, a little bigger area. But do you have some people that could use some jobs down in Tampa, Florida?

Ms. BAKER. Yes, sir.

Mr. TIPTON. If you had access to actually find out about these contracts, to be able to have some actual certainty in terms of going forward what the rules are going to be, any kind of a guess on what type of jobs that might be able to create, what kind of security that might be able to create for existing jobs?

Ms. BAKER. Yes. So the job creation for my sector of industry is not a low-paying help desk arena. And so having opportunities and having visibility to be opportunities that are in cyber creates jobs that are six-figure jobs. And these are newly created jobs. These are not allocating jobs from one area of commercial, the commercial segment to the Federal segment. It is actual new creation.

So, you know, what could it mean? The size of the contracts that are due and the new opportunities for cyber threat detection really, you know, create, in terms of compensatable jobs, millions and we are talking, you know, a job with one agency just on a cost basis could be a \$2 million underlying cost structure.

Mr. TIPTON. Right. And I like the chairman, and I know the ranking member, as well. Appreciate the administration, Small Business Administration, for taking the time to be able to be here and listen to some of your comments. They are here. What would you like to be able to tell them? What can help?

Ms. Baker.

Ms. BAKER. My gist today and the thing that I would love to urge, it is desperately needed, is that we invoke and we put into practice the similarly situated entities. Small businesses do not have the ability to go together when they are in the same class and compete without that 50 percent rule applying. In industries and in services, in goods that are of higher value, it is impossible for somebody to come in and be a sub and meet that rule. As long as all the moneys are going to the class of the similarly situated entities, I just urge that what the good work that has already been done by this committee gets put into place so that we can move forward and not lose out on more opportunities.

Mr. TIPTON. Mr. Allen, what advice would you give in what she described as the death penalty when it comes to suspension and debarment?

Mr. ALLEN. I believe that the SBA needs to come up to speed on the suspension and debarment practices, follow the recommendations set forth by GAO. They are now easily identifiable as best practices as implemented by other Federal agencies. That will let people know at least whether they are on one side of the fence or the other, much more clearly. For those that are on the wrong side

of the fence, that will hopefully clarify the process and not waste resources. And for those that are on the right side of the fence, they will know that and they will be able to proceed accordingly.

Mr. TIPTON. Thank you.

I yield back, Mr. Chairman.

Chairman HANNA. Ms. Clarke.

Ms. CLARKE. Thank you, Mr. Chairman.

And thank you Ranking Member Meng.

I would also like to thank our witnesses for your testimony today.

My question is to Mr. Specht. Your written testimony goes to great lengths to discuss the mentor-protege program, a program I share enthusiasm for, as well. Could you dig a bit deeper and flesh out your concerns regarding the possible opportunity cost should the SBA not exercise the NDAA's authority to further expand the program?

Mr. SPECHT. Absolutely. And yes, you are right. I am enthusiastic about the mentor-protege program because I have seen it in action. I have seen large contractors work with smalls and help them build up the infrastructure and make them successful. But the concern is that right now, the only businesses that can be proteges are essentially early-stage 8(a) participants, so small, disadvantaged businesses in the early stages of their business career.

And the problem is that many of those businesses are not yet sophisticated enough to really pursue the large contracts that interest a large business mentor. And so if SBA expands the program and we get more small businesses into the program, larger small businesses, somewhat more advanced small businesses, if we do that sooner rather than later then more of these smalls will find more willing mentors who are willing to pursue these opportunities with them and willing to share their experience with the small business contractors.

Ms. CLARKE. Thank you.

I saw a lot of heads nodding at the table over there as you were speaking.

Would you like to add something, Mr. Allen, Ms. Baker, Ms. Styles?

Mr. ALLEN. I would only add, Ms. Clarke, that I think he is absolutely right. Mr. Specht is absolutely right. In my experience, I have seen hundreds of small companies who are not ready to take that next step, even though they may initially think that they are. And those are the ones that can sometimes end up getting very easily frustrated, walking away from the market entirely, and the government misses out on some of the innovations that those companies can provide and are providing the commercial market. So staying with these businesses and giving them a real sense of understanding that this can be an 18- to 24-month process will, I think, encourage more of them to stay in and we will all benefit from that.

Ms. CLARKE. Ms. Baker, did you want to add something?

Ms. BAKER. In my experience, and in talking to fellow WIPP members, the mentor-protege program is something that is very attractive. It is very hard to come by and one of the reasons will be that you don't meet a designation, such as an 8(a), or you don't

have experience in the government market, even though you may have experience in the commercial market, and so there are a lot of barriers in the conversation about why you are qualified.

And so it appears to me that we would benefit from opening up that dialogue about what the mentor-protege program is truly designed to do and the fact that it is not a program for small businesses just to bring in their relationships. We have had conversations, a number of conversations that say, you know, prime contractor X, and this has happened, discussions with about five of them, would love to do a mentor-protege program.

And the way that you get to get into the mentor-protege program is you bring them business. You bring them business. And then, you know, you have got to think about it. Then, who really needs who in this situation? So it is a source of frustration, and it is one in which my company would love to participate in, but I just don't see how it is worth the hassle and the time for us. We don't have an 8(a) designation. We are an EDWOSB. And it just seems that we have other to take another route.

Ms. CLARKE. Mr. Chairman, I yield back.

Chairman HANNA. Thank you.

We are privileged today. Ranking Member Velázquez is here.

Ma'am.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

And let me take this opportunity to thank the witnesses for being here today. This is an area where I have devoted so much energy and time throughout the years as a member of this committee in advocating, if there is a way where we could help small businesses do what you can do best and that is creating jobs, is to have a level playing field for businesses to be able to access federal contracts.

Ms. Baker, I would like to ask you a question. There are multiple advocates in place to ensure that small businesses receive a fair share of federal contracts and are not disproportionately affected by acquisition policies. Businesses have reached out to these advocates for guidance in navigating the in-sourcing process. Do you believe that these offices are doing enough at the front end of the decision-making process to ensure that small businesses receive fair treatment?

Ms. BAKER. I truly believe that the intent is there, and I truly believe that shepherding small businesses to the right decision-makers is something that the liaison officers have well embraced. The issue often that we have to overcome is, especially in my industry with cyber, is the thought process that the decisionmaker or the contracting officer does not believe that a small business can do the quality of work that we actually do and win awards for in the commercial sector.

So, you know, to deal with the small business liaison officer to get to the right contracting officer or the actual buyer is something that is embraced by the advocate in the agencies, but they are not always effective in finding and reaching and being knowledgeable about the opportunities. And often, when they are educated, it is to bring in a small business that really is a sub, when often we can actually be primes.

Ms. VELÁZQUEZ. Okay. Thank you.

Mr. Allen, contracting officers are supposed to use market research to aid them in determining what contracts go to what small business program. Have you found that contracting officers are doing the research prior to releasing solicitations?

Mr. ALLEN. In many cases, Ms. Velázquez, no. And some of that has to do with the fact that contracting officers have a lot on their plate. They are very overworked. We have seen their numbers dwindle, particularly the ones that are experienced, leaving the government. The result is that you have a very uneven amount of experience in the acquisition workforce, so we don't always see that market research being done.

Ms. VELÁZQUEZ. So perhaps you will agree that sometimes the rhetoric "doing more with less" might sound good but not in this case, where we have an agency that has one of the smallest budgets throughout the federal government. And yet, we love to preach and talk about the important role that small businesses play, but if we don't provide the resources for the Small Business Administration to do their job as well as the committee to do the work that we are supposed to do here—because I think that we could come here and criticize SBA for not issuing the regulations, but then we have to understand what type of record—congressional record—there is that would allow for those who will be issuing those regulations to go back and see the intent of Congress when we pass legislation here. It would be much easier for the SBA to have that wealth of information coming from the committees work. It is not right that we come and allow for other committees to introduce and put provisions in their defense authorization when we didn't do the work here on the Small Business Committee.

So it would be difficult for the SBA, and that creates confusion. You touched on the debarment issue. Well, they need to go back and check, what was the intent. If we don't have the congressional record, they will not have that information, which will make their job more difficult and complex.

With that, I yield back, Mr. Chairman.

Chairman HANNA. I want to thank our first panel and invite you to stay if you would like. I know at least one of you has a plane to catch. And we have votes at around 20 after, perhaps. So we should be able to hopefully work through this. Thank you again for your time and your willingness to participate at this hearing.

I want to welcome SBA Associate Administrator John Shoraka. Mr. Shoraka is responsible for all the government contracting and business development programs at the SBA, including the insurance procurement regulations. Mr. Shoraka has appeared before this Subcommittee many times, and I am happy that he is here.

And I am glad you brought reinforcement. So welcome.

**STATEMENT OF THE HONORABLE JOHN SHORAKA, ASSOCIATE ADMINISTRATOR FOR GOVERNMENT CONTRACTING AND BUSINESS DEVELOPMENT, SMALL BUSINESS ADMINISTRATION, WASHINGTON, D.C.**

Mr. SHORAKA. Thank you for having me. Chairman Hanna, Ranking Members Meng and Velázquez, and members of the Subcommittee, I am honored to be here today to present SBA's ongoing efforts to expand access to Federal contracting opportunities for

America's 28 million small businesses. SBA's Office of Government Contracting and Business Development oversees the Federal Government's performance against the statutorily-mandated small business prime contracting goal of 23 percent.

This includes ensuring that agencies meet the socioeconomic goals of 5 percent for socially-disadvantaged small businesses and women-owned small businesses and 3 percent for small businesses located in historically underutilized business zones and service-disabled, veteran-owned small businesses.

For Federal agencies to meet these goals, they need to have the right tools in place. The National Defense Authorization Act for fiscal year 2013 contained provisions to provide acquisition personnel resources to help small businesses receive approximately \$80 billion annually in contracts. SBA has made significant strides implementing many of the provisions included in NDAA 2013.

We have revised our regulations to eliminate the caps on the dollar threshold of contracts that could be awarded under the Women-Owned Small Business Contracting Program. The cap removal will help close the gap between WOSB accomplishments and the 5 percent goal. SBA understood the importance of eliminating this barrier and acted quickly to issue an interim final rule to implement the change, which was incorporated into the Federal acquisition regulations last June.

We continue to review and update as necessary all size standards. SBA has completed its review of all revenue-based size standards and issued an inflation adjustment last month. As a result, thousands of additional small businesses will be able to qualify for Federal contracting opportunities. As we continue our review of size standards, we have integrated the relevant changes from NDAA 2013 into our process.

Additionally, SBA raised surety bond guarantee limits from \$2 million to \$6.5 million and allows for bonds up to \$10 million if the contracting officer certifies it is necessary for award of the contract. This provides small construction companies with the ability to bid on and obtain larger construction contracts. We are also aware of the importance of senior-level accountability to small business contracting goals.

We have worked with procuring agencies to ensure that senior executives receive training on small business contracting and that meeting small business contracting goals are actually a part of their performance evaluations. SBA's procurement center representatives have also incorporated new small business contracting provisions into the trainings they regularly provide to contracting officers. We continually leverage our work with the Small Business Procurement Advisory Council to share best practices and review the performance of the OSDBU offices at every agency.

At the beginning of June, SBA submitted a draft rule to the Office of Management and Budget's Office of Information and Regulatory Affairs authorized by NDAA 2013, which will allow the small business prime contractors to utilize similarly-situated small business subcontractors to perform the required percentage of work on contracts. This will allow small businesses to work together to win contracts that are larger and have more complex requirements and

that have historically not been suited for small business participation.

In the near future, SBA will publish a rule to implement a new government-wide mentor-protege program. The mentor-protege program will be for all small business concerns including socioeconomic subcategories. This program will be consistent with SBA's mentor-protege program for participation in the agencies 8(a) business development program.

Last month, we published a proposed rule on advisory size determinations which establishes the criteria that small business status advisory opinions must meet in order to be deemed adequate and specifies the review process for such opinions. This rule further amends SBA's regulations to update the circumstances under which the agency may initiate a final or a formal size determination.

SBA continues to review the small business contract goaling guidelines and has now included leasing, to the extent reported, which was a category spend previously excluded. SBA is reviewing the SBA's Office of Advocacy's recently published recommendations for improving the goaling process, and we are working with OMB's Office of Federal Procurement Policy, General Service Administration and other agencies to determine any future improvements to this process.

At SBA, and across the administration, we are committed to ensuring that more small businesses have access to contracting opportunities, to grow their businesses and create jobs in our communities. As Administrator Contreras-Sweet highlighted in her priorities speech last month, the SBA will be a market maker for small companies by opening new business channels within the Federal Government.

Thank you for your continued leadership and support, and I look forward to your questions.

Chairman HANNA. Thank you.

I appreciate the laundry list of what you have completed, but we are really here to talk about what isn't done of the 54 regulations and the 40, I think, roughly that have been not completed. So that is the gist of the argument here today. Not—I appreciate the work you have done.

Also, the notion that was put out there somehow that you were underfunded for this work, yet some \$39 million has been spent on things like a Web site, \$6 million for a Web site, a new Web site. And so I just, I guess what I am saying is, this is the law. There is a requirement. There was a schedule, a time. And you also heard Ms. Styles say clearly that there were things that are very important and they are not done. So I guess, I would just like to know how you feel about the comments you heard and give you an opportunity to talk freely about your opinion of what you heard.

Mr. SHORAKA. Sure. First of all, thank you for the question. I appreciate having been here to hear those comments. It is very helpful in my role to understand the impact that we are having in the community. And I really appreciate when I am out in the field and actually meet with small businesses to receive those comments.

What I will say is, with respect to NDAA 2013, where we found opportunity to move quickly, especially under the women-owned

small business cap removal where we think that will gain significant traction and help us to achieve our goals, we moved rather quickly and did an interim final rule and actually worked with the administration to adjust the Federal acquisition regulations to take effect immediately, or at least by June of last year.

Where we have to work with our sister agencies, where we have equities in our sister agencies, where rules can impact those agencies, I think it is very critical for us to work very closely with those agencies to make sure we get the rulemaking process correct the first time. These are rules that do have significant impact and will have significant positive impact.

But we want to make sure we get them correct the first time around, and we also want to make sure that they go through the public comment period and that the public small businesses, the small businesses that are going to be effected by these rules have an opportunity to actually comment on them.

Chairman HANNA. So what would you say to someone who said that you are ignoring those you don't like and addressing those that you like? Because that is kind of what it feels like. And I appreciate that you have other agencies to coordinate that with, but 19 months is a long time. And the fact that you put up an officer's—a Web site today, you know, there are questions that really need to be answered, and I think that it is important that everybody trust the system—

Mr. SHORAKA. Sure.

Chairman HANNA.—that you have administered.

Mr. SHORAKA. And obviously, I would argue that, you know, there is always room for improvement in the rulemaking process. I would argue that the rulemaking process within our agency is such that we want to make sure all the various equities within the agency understand the impact that this is going to have. We work closely with all the other affected offices at the SBA. But at the same time, when there are opportunities to move quickly and go to interim final rule, we have been able to find those opportunities and take advantage of them.

Chairman HANNA. Are there rules that you have no intention of following of the 40 that are left to address?

Mr. SHORAKA. I would argue that of the rules that were mentioned today, as I mentioned in my testimony, both with respect to the subcontracting requirements, that rule is at a OIRA for clearance, interagency clearance, and will be going out for public comment shortly, and we look forward to receiving public comment on that.

Chairman HANNA. Do you have some kind of timeline of when you expect to—

Mr. SHORAKA. Certainly.

Chairman HANNA.—finish the rest of it? I mean, it is a long list.

Mr. SHORAKA. Certainly. I think the—

Chairman HANNA. There were numerous hearings to make those rules come about.

Mr. SHORAKA. I think the NDAA 2013 rule that is currently in OIRA takes quite a load of the laundry list that was presented here today. The mentor-protégé rule that is also waiting for our administrative signature and should go out shortly for interagency clear-

ance, that also takes a significant stab at what we have heard here today.

Chairman HANNA. Have you heard someone suggest that mentor policy should be expanded or moved down the food chain, actually, to smaller businesses as opposed to—I will yield to Ranking Member Meng. Thank you.

Ms. MENG. Thank you, Associate Administrator Shoraka, for being here today. You mentioned the SBA's mentor-protege program where small businesses can receive subcontracting opportunities. This allows mentors to pass subcontracts to small business protege firms. Can you tell us how many of these opportunities small businesses have received through this program?

Mr. SHORAKA. Currently, the mentor-protege program that we have is for our 8(a) business development program. And I don't have the exact numbers but would be happy to share those with you in the future.

What I will say is that the mentor-protege program is a business development program, right. It shouldn't be viewed as a contracting program, as I am sure you are aware. The intent of the program is to provide some benefit to the protege, be it technical experience, management experience, financial where with all. And that transitional period helps to grow that protege so that in the future, it can go after contracts on its own.

So the metro-protege program for the 8(a) program, as we have heard here today, has been very beneficial in providing opportunities for small 8(a) firms, and the intent is to expand that to all small businesses.

Ms. MENG. I yield back.

Chairman HANNA. Ms. Clarke, we have votes in a few minutes, but we do have time.

Ms. CLARKE. Thank you, Mr. Chairman.

Administrator Shoraka, I have a fairly basic question. The broad lack of compliance regarding the Office of Small and Disadvantaged Business Utilization is staggering. OSDBU is a critically important agency, yet almost all of the mandated reforms are, as yet, unmet. I don't believe that SBA is maliciously ignoring congressional intent, so could you give us a better understanding as to why, as we sit here today, the guidelines and/or regulations have not been issued?

Mr. SHORAKA. Certainly. Statutorily, we don't have authority over an agency's OSDBU, however we work very closely with them through this Small Business Procurement Advisory Council. SBPAC meets regularly, and we talk ability and present best practices that have been successful in our sister agencies and how those can be implemented at other agencies and how OSDBUs can be more successful in presenting small businesses to the contracting community and representing small businesses in the contracting community and making sure that the agency actually meets its goals.

What I will say is that the administration, through the White House Small Business Procurement Group, ask that agencies look at OSDBU's reporting directly to a deputy secretary or higher. And we spent some time, as the agency sort of responsible for monitoring that, spent some time working with each OSDBU and track-

ing the fact that more and more of them over time have been compliant with that request, and I know that that became effective in NDAA 2013.

I think that is really critical in making sure that the small business community's voice is heard at the agency. And I think as we see OSDBU's reporting to senior executives at the agency, small business procurement has become major initiatives at those agencies, and we have seen a lot of traction when it comes to small business procurement.

Ms. CLARKE. Well, I want to encourage as probably part of that, that working group, that, you know, there be some pressure applied here. Because their role is just so critical for them to be sort of trailing behind.

Mr. SHORAKA. Absolutely.

Ms. CLARKE. You know, it doesn't accrue to a benefit to our businesses. And so to the extent that through your relationship you can urge and also express to them our concern here at this committee that that would make all the difference in the world.

Mr. SHORAKA. Thank you.

Ms. CLARKE. With that, Mr. Chairman, I yield back.

Chairman HANNA. Ms. Velázquez.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Administrator Shoraka, I continue to be frustrated by the lack of progress on the women's business procurement program. When you have only 806 contracting actions worth approximately \$40 million awarded last year, there is no other way to describe it other than a failure because it really has been a failure. I need to ask you, what steps are you taking to ensure that the program is fully utilized?

Mr. SHORAKA. Thank you, Congresswoman. I think the program itself has been critical in bringing visibility around women-owned small business procurement. As you are——

Ms. VELÁZQUEZ. The numbers.

Mr. SHORAKA. Sure. And as you are aware much more than I am, the program, the law was established in the early 2000s and the administration really took the effort in 2009 to establish the program. What I would say is that our administrator is very keen on making sure that this program is effective. It is unique. There are 83 NAICS codes where contracting officers can set aside a contract for women-owned small business programs.

I think with removal of the caps, we are seeing more and more traction where set-asides can actually happen, because with caps of \$4 million and \$6.5 million, you can imagine how many thousands of contracts would have to be set aside to achieve that 5 percent goal. So I think that was really critical, and it was critical that we moved quickly to take those caps out.

What I will say is that we will work continuously to train contracting officers. And not only that, we have cosponsorships with American Express OPEN and Women Impacting Public Policy to bring education around the program to women-owned small businesses, because when they take ownership, they have really been demanding at agencies to take ownership of it, as well.

Ms. VELÁZQUEZ. We will see next time you come before this committee.

Mr. SHORAKA. Thank you.

Ms. VELÁZQUEZ. We heard one of the witnesses on the first panel raise concerns over two regulations within debarment that seem to conflict with each other. And without getting into those specific details, I want to ask you, if this committee had actually done its work by reporting bills, filing a committee report, debating these bills on the floor and going to conference with the Senate and producing a conference report, would that have made it easier for you to reconcile what Congress' intent was on this provision as well as helping speeding up the process in getting those regulations done?

Mr. SHORAKA. Sure. Thank you for the question. With respect to that particular question around suspension and debarment, that is obviously not necessarily in my lane. It is our Office of General Counsel.

Ms. VELÁZQUEZ. Uh-huh.

Mr. SHORAKA. What I will say is that anytime the intent of Congress can be clearly discerned by us is very helpful in developing results and regulations based on that.

Ms. VELÁZQUEZ. But would you agree on my estimation that when you build a congressional record, it makes it easier on those who are working on drafting and issuing those regulations?

Mr. SHORAKA. Sure.

Ms. VELÁZQUEZ. Because, you know, regulations are a very complex action, and sometimes you need to go back and look at the intent of Congress. When you lack a committee report and when you lack debate on the House floor, then that record doesn't exist. And what I am asking is, do you think it would make your work easier?

Mr. SHORAKA. So, again, thank you for the question. My involvement in the rulemaking process, being that I am not the lawyer at the agency and I don't actually draft the rules, is making sure that they are timely, as to the extent possible, and making sure that they reflect congressional intent and making sure that they reflect the statute. What I would say is that in my view, anytime that can be discerned more clearly, it is helpful to the process.

Ms. VELÁZQUEZ. Thank you.

Thank you, Mr. Chairman.

Chairman HANNA. Thank you, Ranking Member Velázquez.

There are committee reports to look at for all of the hearings that happened. And as a practical matter, these are the law, so we are not here to interpret them. We are here to respond to them and put these in place.

So I want to thank you here today for being here, sir. I know you have been here many times, and you are always gracious. I appreciate that.

I think that it is important that we all owe small businesses as quick and efficient and clear a response as we possibly can and try to help weave them through the bureaucracy. To that end, I don't know what this committee can do, but I think if you are experiencing trouble with agencies in getting them to respond, I am sure that Chairman Graves and Ranking Member Velázquez, if I speak for her, would be happy to help you navigate that and perhaps make people more responsive.

I ask unanimous consent that members have 5 legislative days to submit statements and supporting materials for the record.

Without objection, so ordered.

This hearing is now over. And, again, I want to thank everyone for being here.

[Whereupon, at 2:19 p.m., the Subcommittee was adjourned.]

## APPENDIX

STATEMENT OF ANGELA B. STYLES

PARTNER, CROWELL & MORING LLP

BEFORE THE HOUSE COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON CONTRACTING AND WORKFORCE

JULY 15, 2014

CHAIRMAN HANNA, CONGRESSWOMAN MENG, AND MEMBERS OF THE SUBCOMMITTEE, I appreciate the opportunity to appear before you today to discuss the impact of the Small Business Administration’s failure to implement federal contracting reforms mandated in the National Defense Authorization Act for FY 2013 (“NDAA”). SBA’s failure to act has created significant ambiguity for federal contractors—both small and large. While this uncertainty keeps the lawyers busy, it costs government contractors—and ultimately results in higher prices for the federal government and taxpayers. As the chair of Crowell & Moring’s government contracts group, the Coordinator of the Defense Industry Initiative on Business Ethics and Conduct and the former Administrator of the Office of Federal Procurement Policy at the Office of Management and Budget, I work with government contractors effected by SBA’s inaction—every day. What we have started to see is a dramatic increase in compliance questions related these unimplemented provisions. Businesses are concerned and confused by SBA’s failure to implement a number of NDAA provisions. This legal uncertainty, and the resulting increased compliance costs, need not exist.

### **Subcontracting Limits**

In a much needed reform, the NDAA modified the Small Business Act to add a new provision relating to limitations on subcontracting for federal prime contracts awarded to small businesses under “set-aside” programs. So, for example, when a federal procurement is “set-aside” for competition among small businesses, the winning small business prime contractor is restricted from subcontracting more than a certain percentage of the amount paid by the federal government to a large business. For service contracts awarded as a “set-aside”, the new statute provides that the small business prime contractor “may not *expend on subcontractors* more than 50 percent of the amount paid to” the small business prime contractor by the federal government.<sup>1</sup> The new NDAA statutory provision is a meaningful change in two ways. First, the limitation on subcontracting regulations for many years (and still existing in the current unmodified form) require small business prime contractors awarded a prime contract on a set-aside basis to agree that “[a]t least 50 percent of the cost of contract performance incurred

---

<sup>1</sup> 15 U.S.C. § 657(s)(a)(1) (2014).

for personnel shall be expended for employees of” the small business prime contractor.<sup>2</sup>

In practice, what constitutes the “cost of contract performance” for personnel has been impossible to understand or implement. So for example, if a small business prime contractor was awarded a \$100,000 contract to maintain trucks at a military base and the small business prime contractor wants to subcontract engine maintenance to a large business, the small business prime contractor would have to convert the firm fixed price into a “cost of performance” metric and compare their cost of performance for personnel to the cost of performance of the large business subcontractor. No one (the businesses or the government) really knows if they are administering the limitations on subcontracting correctly and this uncertainty has led to many disputes with the government and between prime and subcontractors. Fortunately, the NDAA changed this vague requirement into a simple calculation. In our example, the small business prime contract awarded a set aside contract could subcontract \$50,000 of the award to a large business—simple and easy to administer.

The problem, however, is the SBA’s failure to implement new regulations consistent with the new NDAA limitations on subcontracting statutory provision. A new contract (executed by a federal agency today) would contain the old regulation (FAR 52.219–14) which requires the contractor by contract term to ensure that “[a]t least 50 percent of the cost of contract performance incurred for personnel [is] expended for employees of” the small business prime contractor. The contract clause, however, does not exempt the small business prime contractor from also complying with the new NDAA statutory provision on limitations on subcontracting. Compliant and diligent small business are left in the position of implementing two inconsistent provisions, a statute that allows them to subcontract 50% of the amount they are paid and a contract clause which requires them to perform 50% of the cost of performance with their own employees.<sup>3</sup> This inconsistency is adding millions of dollars to compliance costs for small businesses.

Second, the new statute allows a small business prime contractor winning a set-aside contract to subcontract any amount of work to similarly situated small business. Under the existing regulation, with minor exceptions, the limitation on subcontracting applies to subcontracts with both large and small businesses. So a small business prime contractor winning a “set-aside” award has significant limitations on the amount of work that could be subcontracted to another small business—treating subcontracts with large business the same as subcontracts with small businesses. The regulation also prevents joint ventures among small businesses where for example 45 percent of work would be completed by one small business in a joint venture, 45 percent by another small business in that joint venture, and only 10 percent subcontracted to outside business entities. The NDAA clarified this restriction with a simple

<sup>2</sup> 48 CFR 52.219–14(c)(1) (emphasis added).

<sup>3</sup> In accordance with 41 U.S.C. 429–431, commercial item contracts and contracts below the simplified acquisition threshold are likely not subject to the new NDAA statutory provision until a determination is made by the Federal Acquisition Regulatory Council as to their applicability.

rule that would allow the prime small business subcontractor to subcontract any dollar amount to a similarly situated small business.

SBA needs to immediately begin this rulemaking process to resolve the uncertainty and improve the business climate. First, the SBA needs to change its regulations to reflect the laws Congress explicitly changed.<sup>4</sup> That action will spur the Federal Acquisition Regulation Council to change the FAR's limitation on subcontracting clause.<sup>5</sup> Neither of these entities has taken action, and that failure is increasing the cost of doing business with the government.

### **Other Unimplemented Reforms**

#### *Small Business Opportunities Website*

Finding federal contracting opportunities can be an intimidating proposition. Even large contractors with hundreds of federal contracts under their belt have questions about the intricacies of the process. For small businesses, especially those that have never competed for these contracts, finding federal opportunities can be doubly hard. Faced with that complexity, many small businesses are deterred from the process altogether.

To help allay those fears, Congress mandated that SBA establish a website to allow large businesses to post subcontracting opportunities for small businesses.<sup>6</sup> SBA has not yet implemented that requirement, and thus, it has denied small businesses from having a user-friendly means to access and compete for federal subcontracts. Not only should SBA implement such a website, but it should also expand the website's reach by allowing existing small business prime contractors to access the forum to post their own subcontracting opportunities. SBA has still not completed this relatively simple act, and is depriving small businesses of the access to contracting opportunities that Congress hoped to give them.

#### *Mentor-Protégé Program*

In another attempt to encourage inexperienced small businesses to compete for federal contracts, Congress established a mentor-protégé program—pairing small businesses with larger, more experienced federal contractors.<sup>7</sup> Congress tasked SBA with outlining the requirements for the program, including which contractors would be eligible for the program and the types of assistance mentors could provide their protégés.<sup>8</sup> If properly implemented, this program could significantly expand the number of small businesses actively competing for government contracts. However, without SBA implementation, the program will never materialize. Congress

<sup>4</sup> 13 C.F.R. 125.6(a).

<sup>5</sup> 48 C.F.R. 52.219–14.

<sup>6</sup> 15 U.S.C. 637(k)(1) (2014).

<sup>7</sup> 15 U.S.C. § 657(r)(a)(1) (2014).

<sup>8</sup> 15 U.S.C. § 657(r)(b)(3)(A–J) (2014).

gave SBA 270 days to issue regulations governing this program;<sup>9</sup> today, 562 days later, SBA has still not done so.

*Safe Harbor for Good Faith Efforts to Comply with Size Regulations*

Prior to the NDAA, well-meaning small businesses that misinterpreted the complex small business size regulations could be convicted of fraud, subjecting them to fines of up to \$500,000 and 10 years of imprisonment for misrepresenting their status as a “small business concern.”<sup>10</sup> Recognizing that this rule might inadvertently punish successful and honest small businesses trying to comply with size restrictions, Congress mandated that SBA to create a “safe harbor” process for small businesses to obtain a written advisory from a Small Business Development Center for Procurement Technical Assistance Center for good faith attempts to comply with these size regulations.<sup>11</sup> Congress gave SBA 270 days to issue rules defining the contours of this provision;<sup>12</sup> today, 562 days later, SBA has only found the wherewithal to issue a proposed rule for public comment. It is difficult to fathom why SBA, taking the effort to draft and issue proposed rule for comment, did not simply issue the rule as an immediately effective interim rule. By issuing a proposed rule, the harshness of potential penalties remains for an unlimited period of time.

*Other Reforms*

Recognizing the complexity of the federal contracting process, Congress mandated that SBA create a compliance guide for small businesses attempting to determine their size status. This guide would “assist business concerns in accurately determining their status as a small business concern” to prevent inadvertent fraudulent misrepresentations.<sup>13</sup> A relatively straightforward task, Congress gave SBA 270 days to conduct this revision;<sup>14</sup> today, 562 days later, SBA has not taken any action.

Congress mandated that SBA issue clear guidance listing the Administration’s standard operating procedures for suspension and debarment, as well as publicizing the name of the “senior individual responsible for suspension and debarment proceedings.”<sup>15</sup> Congress gave SBA 270 days to take these simple actions;<sup>16</sup> today, 562 days later, SBA has not issued any guidance. SBA, however, continues to actively suspend and debarment companies and individuals without standard operating procedures.

**Conclusion**

If SBA continues to withhold these regulations, federal contractors may have legal standing to sue the SBA over its failure to act. The Administrative Procedure Act, which governs agency rule-

<sup>9</sup> 15 U.S.C. § 657(r)(b)(3) (2014).

<sup>10</sup> 15 U.S.C. § 645(d) (2014).

<sup>11</sup> National Defense Authorization Act for FY 2013, Pub. L. No. 112–239, § 1681(a) (2012).

<sup>12</sup> *Id.*, at § 1681(b).

<sup>13</sup> *Id.*, at § 1681(c).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, at § 1682(c).

<sup>16</sup> *Id.*

making procedures, allows a court to compel an agency to act if the agency has “unlawfully withheld” or “unreasonably delayed”<sup>17</sup> some “*discrete* agency action [the agency] is *required to take*.”<sup>18</sup> Such failure to act, the Supreme Court has made clear, includes “the omission of an action without formally rejecting a request—for example, the failure to promulgate a rule or make some decision by a statutory deadline.”<sup>19</sup> SBA has failed to promulgate the rules that Congress mandated that it promulgate. SBA was under a clear legal obligation to issue several sets of regulations within 270 days; its inaction for nearly twice that amount of time constitutes both an unlawful withholding and an unreasonable delay. But what small business has the money to launch such legal action?

The Small Business Administration’s mission is to “aid, counsel, assist and protect the interests of small business concerns.”<sup>20</sup> SBA’s failure to act is crippling the very small businesses it is supposed to protect and assist. Congress enacted common-sense reforms in the NDAA—reforms that (1) clarify the complex limitations on subcontracting, (2) allow small businesses to team to more effectively, (3) eliminate regulatory compliance burdens, and (4) provide opportunities for new small businesses to get into the government contracting business. SBA’s failure to act has denied these benefits to federal contractors large and small, resulting in inefficiencies and lost opportunities for economic growth.

This concludes my prepared remarks. I am happy to answer any questions you may have.

---

<sup>17</sup> Administrative Procedure Act § 706(1); *see also* Administrative Procedure Act § 551(13) (stating that agency action, under the APA, is defined to include “the *whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act*”) (emphasis added).

<sup>18</sup> *See Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 64 (2004) (emphasis in original).

<sup>19</sup> *Id.*, at 63.

<sup>20</sup> U.S. Small Business Administration, Mission (June 10, 2014), [http://www.sba.gov/about-sba/what\\_we\\_do/mission](http://www.sba.gov/about-sba/what_we_do/mission).



Testimony of Charlotte Baker, CEO, Digital Hands

on behalf of

Women Impacting Public Policy

to the

House Small Business Committee  
Subcommittee on Contracting and Workforce

*Action Delayed, Small Business Opportunities Denied:  
Implementation of Contracting Reforms  
in the FY 2013 NDAA*

July 15, 2014

**Testimony of Charlotte Baker, CEO, Digital Hands, on behalf of Women Impacting Public Policy to the House Small Business Subcommittee on Contracting and Workforce**

Chair Hanna, Ranking Member Meng, and distinguished Members of the Subcommittee, thank you for the opportunity to testify this afternoon.

My name is Charlotte Baker and I am CEO of Digital Hands. I also serve on the Education Foundation Board of Women Impacting Public Policy (WIPP). Based in Tampa, Florida, Digital Hands provides IT services to large enterprise companies as well as public entities—in essence, helping them in their ongoing war against growing cyber-threats.

I am here today representing Women Impacting Public Policy (WIPP). WIPP is a national nonpartisan public policy organization advocating on behalf of its coalition of 4.7 million business women including 75 business organizations. WIPP plays a key role in developing women-owned businesses into successful federal government contractors through its Give Me 5 and ChallengeHER programs.

The title of the hearing sums up our testimony today. “Action delayed: Small Business Opportunities Denied” is the reason the women-owned business community needs the Small Business Administration (SBA) to implement Sec. 1651 of P.L. 112–239 as soon as possible. This provision should be a top priority for the agency tasked with assisting our community, because it allows small businesses to work together on federal contracts without unnecessary subcontracting restrictions. Moreover, women-owned companies like mine can better take advantage of the Women-Owned Small Business Federal Contract Program, because prime contractors will have greater flexibility to subcontract with other women-owned contractors.

While many small business provisions of P.L. 112–239 affect contracting, Section 1651 focuses on subcontracting requirements. The section makes an important change—that the 50% prime contractor work requirement on set-aside contracts is made on the basis of total contract dollars rather than based on the current method of labor costs. This change ensures that the majority of dollars set-aside for a small business goes to that small business.

Within this section, however, is subsection “(b)”, which focuses on an exemption to this requirement for “similarly situated entities.” This change, in particular, will increase the ability of small businesses to work together on federal contracts.

**The Importance of Implementing “Similarly Situated Entity” Provisions**

For my company, and many other women-owned businesses, the “Similarly Situated Entities” provision will reduce barriers to contracting. For purposes of definition, a “similarly situated entity” is a WOSB prime contractor winning a WOSB set-aside contract and subcontracting work to another WOSB firm. Another example is a

small business prime contractor winning a small business set-aside and subcontracting to another small business.

For businesses new to procurement, subcontracting is often the first step toward entering the federal marketplace. In its description of subcontracting, the SBA goes so far as to call it, “a great way to ‘get a foot in the door’ of government contracting.”<sup>1</sup> Statute, however, places limits on the amount of work subcontractors can perform.

The “Similarly Situated Entities” provision of Section 1651 would change that requirement for small businesses with similar designations. This is a change WIPP advocated for before this Committee. On October 6, 2011, Board Chair Jennifer Bisceglie urged the Committee to change it and this Committee shepherded this change through the Congress.

Again, current law requires that at least 50% of any contract dollars awarded through a small business contracting program go to that small business. This ensures that contracts set-aside for certain groups (e.g. Small Business, WOSB/EDWOSB, HUBZone, 8(a), SDVOSB) ultimately go to businesses of that type—and are not rerouted to other designations or large contractors.

Provision (b) of Section 1651 permits subcontracting of any amount when the subcontractor is a “similarly situated entity.” Once it is implemented, an EDWOSB may subcontract any amount to another EDWOSB. This is a change we strongly support because: 1) dollars awarded remain with companies who have the same set-aside designation and 2) access to contract competition for small businesses is increased. As we continue to respond to federal opportunities, these elements are critical.

#### Benefits of “Similarly Situated Entities” Provision in Section 1651: Digital Hands Example

The delayed implementation of this “similarly situated entity” provision has negatively impacted the WOSB community. Digital Hands’ recent experience is a clear example of why this is so important.

Several months ago, a significant Information Technology (IT) requirement was posted as a set-aside opportunity for EDWOSB competition. Digital Hands and another EDWOSB planned to work together. The other EDWOSB, the prime, was to provide logistical support and access to a Federal Supply Schedule (FSS), while Digital Hands was to subcontract to provide an innovative technology solution. In this case, Digital Hands’ subcontracting work would have resulted in a much higher total labor cost as it would have necessitated the placement of highly trained IT security personnel to meet the agency’s requirements.

While the majority of the hourly work would be provided by the prime through its lower cost technicians, the bulk of the labor cost of the work would be from the sub, i.e., more highly trained, higher

<sup>1</sup> U.S. Small Business Administration. “Sub-Contracting.” <http://www.sba.gov/category/navigation-structure/contracting/contracting-opportunities/sub-contracting>. Accessed May 25, 2014.

paid, IT personnel. Digital Hands was eliminated from bidding on this project because of the current subcontracting rule. The 50% limit effectively prohibits such an arrangement.

Under provision (b) of Section 1651, such partnerships would be allowable—effectively securing the entire contract for the targeted small business companies in the determined set-aside category and increasing access to the federal marketplace for the subcontractor. Both of these are stated goals of the program. However, as this rule has yet to be promulgated, EDWOSB's, like Digital Hands, are very limited in our ability to team with other women-owned companies or for the matter, any small companies.

My recommendation is simple: urge the SBA to implement this provision as quickly as possible to bring these necessary changes that impact businesses who are the economic engine in the United States. Thanks to this Committee's leadership, Congress passed the change; now, the SBA needs to implement it. The longer the delay, the more that all small businesses will continue to miss out on opportunities.

Thank you for providing a forum to present at this hearing today and for your efforts to make the contracting environment better for women-owned businesses. Hopefully my story will expedite the enforcement of this rule. I am happy to answer any questions.

### **About Digital Hands**

Digital Hands is a certified woman-owned small business (EDWOSB), providing IT operations support with core capabilities in cyber security, infrastructure management and help desk. The company provides solution architecting, strategic sourcing, deployment, and ongoing operational support. A key differentiator of Digital Hands is the company's ability to develop innovative service solutions around emerging technologies as well as having two service models; a remote model (from secure onshore locations) and the traditional customer on-premise service model. Digital Hands leverages the cloud to reach global clients and provide Tier 1 through Tier 3 support services, on a 24x7x365 basis, for complex IT environments.

Some of North America's largest airlines, telecoms, financial services companies, and hotel chains rely on Digital Hands' SLA-based managed IT and security services every day. The company offers business model alignment that caps risk and optimizes costs. In addition, Digital Hands provides reliable and predictable IT operations support that allows organizations to focus on core business needs.

The company has received numerous awards from the Technology Services Industry Association, including the 2013 TSIA Star Award for "Innovation in the Delivery of Managed Services" and 2011 for "Complex Application Support" and, previously, "Best Practice Awards—Customer Commitment" and "Service Excellence—Integrated Services."

**TESTIMONY OF**

LARRY ALLEN

PRESIDENT

ALLEN FEDERAL BUSINESS PARTNERS

House Small Business Committee

July 15, 2014

Good afternoon, Mr. Chairman and Members of the Committee. I am honored to be here this afternoon to discuss the pace of the Small Business Administration's implementation of three key small business provisions that became law upon the passage of the National Defense Authorization Act (NDAA) of 2013. These provisions are intended to provide clarity and protection to small firms doing business with the US government. Delays in establishing rules through which the implementation of the legislation is executed harm the small businesses that Congress wanted to protect by passing the original legislation.

I have worked in government procurement and contracting for 25 years. During that time I have worked with thousands of small firms that sell to the US government as either a prime or subcontractor. I have both extensive policy and business planning experience. When President of the Coalition for Government Procurement, I was privileged to work on legislation such as the Federal Acquisition Streamlining Act, Clinger-Cohen Act and legislation requiring Federal Prison Industries to compete more evenly with small businesses. I have advocated for a level playing field for small firms throughout my professional career and, as a small business myself, continue to work for a federal business climate that promotes common sense.

The federal government relies on small business contractors to make it possible for agencies to meet their missions. Small businesses help ensure that programs assisting low income households have the money they need to feed their families. Small firms help provide for the national defense. Others perform critical, cutting edge research that will help solve problems in healthcare and technology that many of us do not know yet exist.

The diverse nature of small firms doing work with federal agencies makes it essential that the rules governing this business are as clear and well-known as possible. Today's small business supplier base includes firms with substantial federal experience as well as those just entering the market. Experienced firms need to know if the ground beneath them is shifting, while new market entries need to ensure they have a good map in the first place.

I am here today to discuss Sections 1681, 1682, and 1683 of the FY'13 NDAA. Collectively, these laws will limit the liability of companies receiving advice from federally-supported entities on government contracting matters, provide greater clarity about small business suspension and debarment procedures, and provide this body with additional reporting on that process to ensure the fair treatment of small business government contractors.

### **Section 1681**

Section 1681 establishes Safe Harbor protections for small businesses that rely on advice given by either Procurement Technical Assistance Centers (PTAC's) or Small Business Development Centers (SBDC's). PTAC's provide local, in-person counseling and training services for small business owners. SBDC's provide services through professional business advisors such as the development of business plans; manufacturing assistance; financial pack-

aging and lending assistance, and other services small firms need to become successful. These two organizations work in tandem with the US Small Business Administration to offer assistance to small firms seeking information on how to get established as a government contractor. Information on both PTAC's and SBDC's can be found on the SBA's own web site. Small businesses that take advice from these organizations implicitly believe that it is correct and has the support of an agency of the United States government behind it.

Yet, without the implementation of Section 1681 small contractors could find themselves in significant trouble if they act based on recommendations of an SBDC or PTAC that are inconsistent with established procurement rules. There are many centers dispensing advice to small firms of all kinds and, despite the best intentions of those involved, it is very possible that either incorrect or incomplete information could be dispensed. If, though, a company believes that it has received correct advice from an organization to which a US government agency directed it, and acts on it, it could be in violation of a host of federal procurement rules. Without the protections envisioned by Section 1681, small firms that inadvertently fall into non-compliance could find themselves exposed to government audits, investigations or whistleblower actions.

The myriad federal contract oversight organizations ensuring contract compliance are extremely active in the current market. I spend a significant amount of time in my business explaining government contract compliance to clients and emphasizing its importance. The need to ensure strict contract compliance can best be summarized by my current motto: "When selling to the government, it's not about how much money you make, it's about how much you keep."

Failure to properly follow applicable laws and regulations can have a significant negative impact on a small firm's ability to operate. Under the Civil False Claims Act, for example, the government is entitled to triple the amount of monetary damages it actually incurred, in addition to an \$11,000 per invoice fine. Once a small firm that has committed a False Claims Act violation is through with the litigation, fines, and attorney's fees associated with a negative action, it may find that its very viability has been compromised.

The Safe Harbor provisions of Section 1681 would protect small firms from the worst penalties if their violations were caused due to reliance on faulty information provided by a PTAC or SBDC. Violators would not be off the hook for all problems, but rather have limited liability for any portion of their violations that came from advice supplied by a PTAC or SBDC.

Section 1681 calls for the SBA to establish a process by which small businesses receiving information and advice from PTAC's and SBDC's would receive a standard letter noting that the business has some limited legal protection if advice from the organization relied upon turns out to be incorrect. As with any other issue surrounding government contracting, having a written determina-

tion on government letterhead is essential if proper protection is to be provided contractors during an audit or investigation.

Having a standard, transparent, consistent practice for the issuance of such letters is critical if Section 1681 is to operate as intended. SBDC's and PTAC's are operated by a wide array of organizations in over 1,000 locations throughout the world. A common standard, therefore, is essential to ensure that all businesses operate on an equal platform and have the protections intended no matter where a firm is doing business.

One particularly important matter where accurate guidance is needed is on the matter of whether a particular business can actually be considered "small". As the Committee is aware, the regulations governing business size are complex and vary widely. While intended to be an objective standard, the nature of business and commercial market evolution injects a considerable degree of subjective judgment into the proper identification of some companies. Section 1681 recognizes this reality by requiring that the SBA issue a Compliance Guide to assist in ensuring that companies are properly classified. This Guide could be a valuable tool to reduce the chances that a firm would be improperly classified.

As the Committee is certainly aware, being mis-categorized as a small firm can lead to significant negative consequences for a business. Just some of the penalties that can be levied include contract cancellation, post-award contract audits, negative performance evaluations and, of course, suspensions and debarments. Companies that could have been protected from these penalties by the issuance of the Guide called for in Section 1681 are still in as much risk as they were before the law was passed.

Despite the obvious benefits to small firms of having the protections provided for in Section 1681, the SBA has yet to promulgate a rule implementing it. Congress is now far down the road on completing the NDAA for FY'15, meaning that nearly two years have lapsed since the implementation of the FY'13 measure. Small businesses continue to be exposed to potential litigation and other negative actions today due the agency's inability to move forward. Put another way, the SBA's inability to act is costing small firms money and placing them in unnecessary risk.

### **Section 1682**

As noted above, among the penalties at the government's disposal to discipline inappropriate contractor behavior are suspension and debarment. These penalties are, quite rightly, referred to as the "death penalty" by some in the federal contracting world. A federal suspension or debarment brings all of a company's public sector work to a halt at the federal, state, and local government levels and as either a prime or sub-contractor.

Suspensions and debarments are currently increasing. Just last month, the Government Accountability Office issued a report showing that such actions have more than doubled government-wide since 2009. Ironically, the same report identified improvements made in six government agencies to bring consistency and trans-

parency to the suspension and debarment process, something the SBA is specifically supposed to do per Section 1682. The GAO noted the positive progress in the agencies it tracked, making a lack of progress at the SBA more notable.

Section 1682 calls on the SBA to issue new suspension and debarment regulations within 270 days of enactment of the original bill. Similarly, new Standard Operation Procedures (SOP's) were to be developed in the same timeframe. Among the latter was a requirement that the name of a specific Suspension and Debarment Officer (SDO) be identified.

We are now significantly beyond the 270 day limit. Without newly issued rules, two things are happening in the small business world. First, companies wrongly identifying themselves as small, but working under a contract as a small business, have an easier time fighting suspension or debarment proceedings. This is in part the case because the provisions in Section 1682 allowing contracting officers to take such an action regardless of whether the firm is providing satisfactory work have yet to be implemented.

Secondly, truly small firms are suffering from the lack of a consistent, transparent suspension or debarment process from the agency charged with protecting and promoting their federal market participation.

Neither of these outcomes can be called acceptable. The consequences of a suspension or debarment action can be truly business-ending. This is why such proceedings have traditionally been above the political fray and carried out in a clear cut manner. There simply must be an updated, standard set of procedures that the SBA will follow when its officials literally hold the life or death of a firm in their grasp.

Other agencies have taken necessary steps to improve their processes, even in the absence of specific legislative guidance to do so. These recent actions have created a set of real-time best practices that the SBA could draw upon to establish their own rules. Congress passed Section 1682 with the intent to protect small businesses, whether it be from competition from firms that are not actually small or from patchwork suspension and debarment practices that can lack transparency and insert subjectivisim into the suspension or debarment process.

As a result of the SBA's inaction, small businesses may actually be treated more fairly at other agencies.

### **Section 1683**

This section requires that the SBA issue an annual report to Congress on suspension and debarment activities. The SBA oversees many types of small firms doing business with the government, including companies with special socio-economic designations. There are special precautions that must be taken when moving against such firms and Congress is right in wanting to review agency actions in this area to ensure that all firms are treated fairly.

As with Section 1682, while the initial intent may have been to suspend or debar companies improperly calling themselves “small”, this section also has the ability to protect actual small firms from inconsistent processes. Including specifics such as the number of companies proposed for suspension, the number actually suspended, and the reasons for such actions, as Section 1683 does, gives Congress a fuller understanding of what is happening in this important area. Other provisions in this section will provide information on how the SBA is working with its Office of the Inspector General and the Department of Justice, to ensure positive procurement outcomes. If these reports work as intended the information in them may actually result in fewer companies being penalized if they can use the information to better understand what it is that gets firms in trouble in the first place.

In addition, properly used, the information in the report can be used to help Congress make future decisions on safeguards, preferences, goals or other public policy measures that impact the manner in which small businesses sell to government agencies. Should, for instance, small firms be subject to the same monetary penalties as a much larger business? The answer to that and other questions may come from the information provided in an annual report. If the report shows that today’s monetary fines are overly punitive on small firms, thus driving some out of the market or keeping others from coming in, Congress could change the rules for small firms if it believed that doing so would be in the government’s best interest.

### **Conclusion**

Our firm recommends that Congress continue to provide oversight on the SBA’s lack of progress in implementing these three key elements of the 2013 NDAA and take steps to hold senior agency officials accountable for this inaction. Small firms are not getting the benefit of the protections originally envisioned. Businesses that are not truly small are still competing with legitimate businesses for small business work. Due to these, and other lapses at the SBA, small businesses are not receiving the support Congress envisioned. As a result, those small firms that are conducting business must often face an uphill battle, while others simply stay out of the market due to their inability to crack the code. This, ultimately, is not in the government’s best interest as it deprives it of unique and cutting edge solutions.

Thank you for your time and attention. I look forward to your questions.

40

Testimony of

Damien Specht

Special Counsel

Jenner & Block, LLP

Co-Chair, Government Contracts Corporate Transactions Practice Group

BEFORE THE UNITED STATES HOUSE OF  
REPRESENTATIVES

COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON CONTRACTING AND WORKFORCE

Regarding “Action Delayed, Small Business Opportunities Denied:  
Implementation of Contracting Reforms in the FY 2013 NDAA”

July 15, 2014

Chairman Hanna, Ranking Member Meng and Members of the Subcommittee, thank you for the invitation to appear today. It is a privilege to share my views on the issues facing small business government contractors with all of you. Before I begin, let me state that my comments are my own and I am not speaking on behalf of my law firm or any specific client.

My name is Damien Specht, and I am a government contracts attorney with the law firm of Jenner & Block here in Washington, D.C. My practice focuses on corporate transactions and compliance counseling for large and small government contractors. Because of my broad-based practice, I have the opportunity to work with businesses ranging from 8(a) program participants, whose company is just beginning to take off, to large prime contractors that have tens of thousands of employees. As I am sure you all are aware, all of these businesses are keenly interested in the small business policies pursued by this body and the Small Business Administration.

When the 2013 National Defense Authorization Act was enacted a year and a half ago, the small business community immediately took notice. The initial reaction from my clients, and the opinion I share, is that the legislation is a “mixed bag” for small government contractors, but that much will depend on how the legislation is implemented by the SBA.

In my limited time, I would like to address three reforms presented, but not yet fully implemented, from the 2013 NDAA.

### SBA’s Mentor-Protégé Programs

From my perspective, the most important change in the 2013 NDAA relates to SBA’s mentor-protégé program.

One of the major benefits of SBA’s mentor-protégé program is that it closes the gap between customer needs and small business capabilities. Many of the small contractors I work with report difficulty convincing large prime contractors or government customers that they can successfully perform technically challenging or large-scale work. Even when they are successful in capturing a large award, small firms face challenges in quickly creating the contract administration, supply chain and compliance infrastructure required to comply with government contracts regulations.

Those facts likely sound familiar to the members of this subcommittee. There is, however, another aspect to this problem. With the increasing pressure to meet small business subcontracting goals and achieve strong past performance reviews, large business contractors are constantly pursuing reliable small business subcontractors. These large contractors report difficulty finding the advanced capabilities and track record of success they need in a key small business subcontractor. After all, it is not enough merely to put a small business subcontractor on your team: Successful contract performance by that subcontractor is vital.

That is where SBA’s mentor-protégé program is invaluable. Partnering mentors with 8(a) small businesses gives the small

business the chance to leverage the mentor's experience and understand what infrastructure is needed to reach the next level. Mentors benefit by gaining a trusted small business partner that, in time, can be used for more sophisticated work. The ability of the mentor and protégé to pursue contracts together as a joint venture is a necessary ingredient to cementing the benefits for both parties.

Currently, these benefits are limited to a very narrow group of small businesses. For a small business to qualify as a protégé under the SBA mentor-protégé program, it must be an 8(a) concern that (1) is in the developmental stage of program participation; or (2) has never received an 8(a) contract; or (3) has a size that is less than half the size standard corresponding to its primary NAICS code.

Because I believe that the SBA mentor-protégé program has been a success, I was pleased to see language the Small Business Jobs Act of 2010 expanding the program to the Service Disabled Veteran-Owned, HUBZone, and Women-Owned Small Federal Contract Business Programs and, in Section 1641 of the 2013 NDAA, authorizing expansion to include all small business concerns. Although SBA has stated that it will make it a priority to issue regulations establishing the three newly authorized mentor-protégé programs set out in the 2010 Small Business Jobs Act, I am not aware of any public statement from SBA that it will exercise the 2013 NDAA's authority to further expand the program. This has led significant uncertainty in the contracting community as to whether the expansion will ever happen.

SBA's delay may be the result of a number of difficult issues it must address. For example, does SBA have the resources it needs to administer a significantly larger program? More specifically, will application processing times increase or oversight be weakened by expansion? Because contractors face hard deadlines for proposal submission, an extended wait for application processing would hamstring potential mentor-protégé joint venturers and undermine the program. Weakened oversight raises its own concerns and may limit the benefit of the program to small businesses.

In addition, the NDAA states that the expanded program "shall be identical to the mentor-protégé program" for 8(a) concerns. But, as discussed earlier, the current mentor-protégé program is limited to a small subset of 8(a) concerns that is in the earliest stages of the program, has not been awarded an 8(a) contract or is half the size of its applicable size standard. Obviously, these criteria cannot be applied to other small businesses that are not 8(a) firms. As a result, SBA faces a choice: Should it allow for small businesses to participate in the expanded program, which would be inconsistent with the current program's focus on only the smallest firms, or should it limit the expanded program to early-stage small businesses as measured by some other yardstick? My own view is that the program was designed for early-stage businesses, so limiting protégés to firms that fall below half of their relevant size standard would be a good way to expand responsibly while focusing on businesses that will benefit the most. If that effort is successful, SBA can revisit further expansion in future years.

Another issue is the fact that the current program is time-limited because 8(a) firms are ineligible for mentor-protégé joint venture. Under the 8(a) program, a large business mentor can perform 60 percent of the set-aside work awarded to a joint venture, but this conflicts with the FAR's subcontracting rules requiring the small business to perform the majority of the work. Whether it does it as part of this rulemaking or another, this inconsistency should be addressed by SBA.

In short, SBA will have a very challenging task implementing these changes. These are not questions with easy answers, and the position that the agency takes will be critical to the future health of what is now an excellent program.

### Other Mentor-Protégé Programs

As effective as I believe the SBA Mentor-Protégé program is, I do not think there is sufficient information available to judge the efficacy of other agency mentor-protégé programs. As you are aware, a number of agencies have created their mentor-protégé programs that offer to compensate large contractors for assisting small businesses and have other benefits, such as allowing mentors to apply assistance given to a protégé against small business subcontracting performance.

In my experience, few clients are aware of agency mentor-protégé programs. Some that are aware of these programs confuse them with the SBA's far more robust program. This can be a fatal error because only the SBA's mentor-protégé program offers an affiliation exemption for a large mentor and small protégé bidding together as a joint venture. As a result, a situation could arise where a protégé is ineligible for set aside award because it incorrectly believes that another agency's mentor-protégé program provides a joint venture affiliation exception.

Because of this confusion, I welcome the 2013 NDAA's effort to increase uniformity among these programs and assess how they relate to the SBA's mentor-protégé program. In SBA's implementation of this legislation must address a number of policy issues:

- The SBA currently imposes a limit on the number of protégés a large business can have and the number of mentors a small business can have. Will these limits apply across all mentor protégé programs or will the limits be applied for participants in each program? Given the difficulties of tracking all mentor and protégé relationships, I would suggest that any limit be imposed on an agency by agency basis. After all, ensuring every willing protégé has a mentor for different aspects of its business can only be beneficial.
- The SBA also limits the number of contracts that the mentor and protégé can pursue as a joint venture. If the same mentor and protégé participate in multiple programs, should that limit apply to all of their awards? If mentor-protégé joint ventures will be allowed in other agency programs, imposing such a limit does not make sense. A higher, cross-program

limit could be considered or the three-contract limit could be imposed on a per agency basis.

- Should the joint venture affiliation exception for the SBA mentor protégé program apply to other agency programs? If so, what is the scope of the exception? In my experience, this exception is one of the most attractive parts of the program. Expanding the exception will limit confusion and encourage participation in all agency programs, but that should be coupled with aggressive oversight to ensure that the program does not become vulnerable to abuse that will, in the long term, undermine its credibility.

- Similarly, SBA must decide whether other mentor-protégé program benefits should be available across all agencies. For example, some agency program offer small business subcontracting credit for costs spent assisting the protégé. This encourages the mentor to follow through on its commitments, so I would argue that such efforts should be adopted across the government and added to SBA's program. However, the more uniform the program benefits, the more questions are raised as to why we have separate agency programs at all.

- As discussed above, SBA must also decide who can be a protégé in these programs. Many agency mentor-protégé programs are available to all small businesses while SBA's program is currently limited to 8(a) concerns. This is part of the larger debate I discussed earlier, but I would suggest that having different eligibility criteria for each agency's program is confusing and unnecessary.

As these issues highlight, we are at a key moment in the future of the mentor-protégé program at SBA and across the government. The goal of this effort should be expanding access and increasing clarity with regard to the benefits of entering into a mentor-protégé relationship. In doing so, however, we cannot forget that administration and oversight of these programs will require resources for each agency with a program.

### Limited Safe Harbor

As I noted earlier, not all the provisions of the 2013 NDAA are helpful for small businesses. One of the areas where the NDAA falls short is with regard to the safe harbor for size misrepresentation. Although Section 1681 of the NDAA required the creation of a safe harbor for good-faith reliance on a written size opinion from SBA, SBA has only recently issued a proposed rule on this topic. More frustrating than the delayed rulemaking, however, is the extremely limited scope of the safe harbor.

As you know, the Small Business Jobs Act of 2010 increased the penalties for concerns that misrepresent their size or status to receive the award of a federal contract to the total amount expended by the government under the contract, subcontract, grant or cooperative agreement.

Although the penalty is harsh, it seems easy enough to comply with this rule: Don't misrepresent your size. However, having litigated size protests in front of SBA's Office of Hearings and Appeals, I can tell you that size cases are very fact specific and SBA's affiliation rules allow for different good-faith interpretations.

For example, the Office of Hearings and Appeal has held that a concern was other than small because it was 18 percent-owned by a large business, which was more than the next largest shareholder at 8 percent.<sup>1</sup> That case is published, so small businesses are, at least in theory, on notice that this specific fact pattern is not acceptable. But what if we change the facts so that the large business is a 15 percent shareholder? Or what if the next largest shareholder holds 11 percent? How is a small business to predict how the Office of Hearings and Appeals would decide that case? It is appropriate to impose a penalty of the entire contract value—potentially trebled—if the small business guesses wrong?

Without an effective regulatory safe harbor to control for situations like this, we are asking small businesses to bet their company on the accuracy of each and every size representation they make. As a practical matter, that risk is prejudicial to the very constituency this subcommittee and the SBA seek to help. The tremendous risk associated with an incorrect representation is also a barrier to entry for small firms in the government contracts marketplace. Why would small business owners pursue federal business when they could lose their business based on a regulatory nuance? For those small government contractors who are successful, an ineffective safe harbor limits the value of their companies, as possible investors will have to factor in the potential for business-crushing losses.

The 2013 NDAA added a safe harbor for small businesses that misrepresent their size in “good faith reliance on a written alert opinion from a Small Business Development Center ... or an entity participating in the Procurement Technical Assistance Cooperative Agreement Program...” Unfortunately, SBA's recent proposed rule-making raises real doubt as to whether this safe harbor will provide any real benefit to the small business community.

The most fundamental concern I have about this safe harbor is that it may never actually be implemented. Although the NDAA lists the entities that can issue advisory opinions, it goes on to say that “nothing in this Act shall obligate either entity to provide such a letter ....” In its rulemaking, SBA emphasizes this point by giving each individual Small Business Development Center (SBDC) or Procurement Technical Assistance Center (PTAC) the individual choice whether to offer advisory opinions. Moreover, the rule confirms that no additional funding will be provided to offices that offer advisory opinions. Given the additional work involved, it is not clear what incentive individual SBDCs or PTACs will have to issue opinions, thus rendering the safe harbor moot. Even if some offices choose to issue these opinions, it is not at all clear what this patchwork of advisory opinion resources will mean for small busi-

---

<sup>1</sup> *Size Appeal of Novalar Pharms., Inc.*, SBA No. SIZ-4977, at 17-19 (2008).

nesses that are outside the regions generally served by a particular office.

Further, even if an SBDC or PTAC chooses to issue advisory opinions, neither SBA's proposed rule nor the 2013 NDAA includes a time limit for issuing those opinions. In my experience, size determinations often take months. If advisory opinions are handled in a similar manner, small businesses that want to rely on this safe harbor may be forced to endure an open-ended delay in submission of proposals and may miss out on procurement opportunities.

In addition, although SBA's rule provides for a 10-day review of advisory opinions by its Office of General Counsel (OGC), the proposed rule does not allow a contractor to appeal an adverse SBDC, PTAC or OGC decision. Given that size determinations are regularly overturned by SBA's Office of Hearings and Appeals, small businesses plainly need an appellate forum. The rule's failure to provide an appeal mechanism puts substantial risk on the small business community for possible errors at the SBDC or PTAC level, which a 10-day review by the OGC is unlikely to resolve.

In sum, it is essential that small government contractors—and small businesses considering entering the federal space—have the certainty of a safe harbor from the presumed loss rule. Without significant revision, however, the currently proposed safe harbor is unlikely to meet that need.

### Conclusion

In conclusion, I would like to emphasize that large and small government contractors need regulatory certainty to plan for the coming years. Whether they consider the 2013 NDAA to be a positive, negative or a mixed bag, the government contracts community is looking forward to working with this subcommittee and the SBA to implement these provisions as quickly and effectively as possible.

Thank you for your time and I look forward to your questions.



**U.S. Small Business Administration  
Washington, D.C. 20416**

**Associate Administrator John Shoraka**

**Office of Government Contracting and Business Development  
U.S. Small Business Administration**

*United States House of Representatives Committee on Small Business  
Subcommittee on Contracting and Workforce*

Chairman Hanna, Ranking Member Meng, and members of the Subcommittee, I am honored to be here today to present SBA's ongoing efforts to expand access to federal contracting opportunities for America's 28 million small businesses.

SBA's Office of Government Contracting & Business Development oversees the federal government's performance against the statutorily-mandated small business prime contracting goal of 23 percent. This includes ensuring that agencies meet the socio-eco-

nomic goals of 5 percent for socially disadvantaged small businesses (SDBs) and woman-owned small businesses (WOSBs), and 3 percent for small businesses located in historically under-utilized business zones (HUBZones) and service-disabled veteran-owned small businesses (SDVOSBs). For federal agencies to meet these goals, they need to have the right tools in place. The National Defense Authorization Act (NDAA) for fiscal year (FY) 2013 contained provisions to provide acquisition personnel resources to help small businesses receive approximately \$80 billion in contracts annually.

SBA has made significant strides implementing many of the provisions included in NDAA 2013. We revised our regulations to eliminate the caps on the dollar threshold of contracts that could be awarded under the WOSB Federal Contract Program. The cap removal will help close the gap between WOSB accomplishment and the 5 percent goal. SBA understood the importance of eliminating this barrier, and acted quickly to issue an interim final rule to implement the change, which was incorporated into the Federal Acquisition Regulations last June.

We continue to review, and update as necessary, all size standards. SBA has completed its review of all revenue based size standards, and issued an inflation adjustment last month. As a result, thousands of more small businesses will be able to qualify for Federal contracting opportunities. As we continue our reviews of size standards, we have integrated the relevant changes from NDAA 2013 into our process.

Additionally, SBA raised surety bond guarantee limits from \$2 million to \$6.5 million, and allows for bonds up to \$10 million if the contracting officer certifies it is necessary for award of the contract. This provides small construction companies with the ability to bid on and obtain larger construction contracts.

We are also aware of the importance of senior-level accountability to small business contracting goals. We have worked with procuring agencies to ensure that senior executives receive training on small business contracting and that meeting small business contracting goals are part of their performance evaluations. SBA's Procurement Center Representatives have also incorporated new small business contracting provisions into the trainings they regularly provide to contracting officers. We continually leverage our work with the Small Business Procurement Advisory Council to share best practices and review the performance of the Offices of Small and Disadvantaged Businesses at the agencies.

At the beginning of June, SBA submitted a draft rule to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs, authorized by NDAA 2013, which will allow small business prime contractors to utilize similarly situated small business subcontractors to perform the required percentage of work on the contract. This will allow small businesses to work together to win contracts that are larger and have more complex requirements and that have not historically been suited for small business participation.

In the near future, SBA will publish a rule to implement a new Government-wide mentor-protégé program. The mentor-protégé

program will be for all small business concerns, including socio-economic subcategories of small businesses, consistent with SBA's mentor-protégé program for participants in SBA's 8(a) Business Development Program.

Last month, we published a proposed rule on advisory size decisions, which establishes the criteria that small business status advisory opinions must meet in order to be deemed adequate and specifies the review process for such opinions. This rule further amends SBA's regulations to update the circumstances under which the Agency may initiate a formal size determination.

SBA continues to review the small business contracting goaling guidelines and has now included leasing, to the extent reported, which was a category of spend previously excluded, into the small business goals. SBA is reviewing the SBA's Office of Advocacy recently published recommendations for improving the goaling process, and are working with OMB's Office of Federal Procurement Policy, General Services Administration, and other agencies to determine any future improvement to this process.

At SBA, and across the Administration, we are committed to ensuring that more small businesses have access to contracting opportunities to grow their businesses and create jobs in our communities. As Administrator Contreras-Sweet highlighted in her priorities speech last month, "The SBA will be a 'market maker' for small companies by opening new business channels within the federal government."

Thank you for your continued leadership and support, and I look forward to your questions.

